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6 UNITED STATES DISTRICT COURT

7 DISTRICT OF NEVADA

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9 UNITED STATES OF AMERICA,

Case No. 2:03-cr-00350-LRH-PAL-6

10 Respondent/Plaintiff,

ORDER

11 v.

12 DARREAL BIDDLE,

13 Petitioner/Defendant.
14

15 Defendant Darreal Biddle moves *pro se* for a compassionate release (ECF Nos. 2007 &
16 2011) under 18 U.S.C. § 3582, which the Government opposes (ECF No. 2026).¹ For the reasons
17 contained with this Order, the Court denies Biddle's motion.

18 **I. BACKGROUND**

19 Darreal Biddle, aka D-Locc, was a "Young Gangsta (Y.G.)" and "shooter" for the Rolling
20 60s Crips gang that operated in Las Vegas from 1990 to 2003. The Rolling 60s Crips gang was a
21 criminal organization whose members engaged in acts of violence, including murder, attempted
22 murder, arson, robbery, and narcotics distribution. As a Y.G. and shooter, Biddle participated in
23 the criminal enterprise by establishing and maintaining gang turf, possessing and distributing illicit
24 drugs, and committing murder. On December 21, 1997, he murdered Billy Rex Traver, a cab driver
25 for North Las Vegas Cab Company, during a robbery, and on September 26, 2001, murdered rival
26 gang members Patrick Hawkins and Adrian Williams during the robbery of a drug house. On
27 September 2, 2002, Biddle was arrested and charged with murder and burglary with a deadly
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¹ The Federal Public Defender's Office filed a notice of non-supplementation. ECF No. 2019.

1 weapon, by Las Vegas Metropolitan Police Department. As a result of a two-year investigation
 2 into the killings of 15 individuals during a war over drug selling turf, these charges were dismissed
 3 and on August 13, 2003, Biddle, along with 21 other codefendants, was arrested by the FBI. After
 4 a 21-count superseding indictment was returned on April 18, 2006, Biddle pled guilty to violating
 5 18 U.S.C. § 1962(d), conspiracy to engage in a racketeering-influenced corrupt organization, on
 6 May 8, 2006. On September 12, 2006, the Court sentenced Biddle to 348 months imprisonment,
 7 to be followed by five years of supervised release.

8 **II. DISCUSSION**

9 Under 18 U.S.C. § 3582(c), "the court may not modify a term of imprisonment once it has
 10 been imposed," except under specified conditions. For a motion brought under § 3582(c)(1)(A)(i),
 11 those specified conditions include that the "defendant has fully exhausted all administrative rights
 12 to appeal a failure of the Bureau of Prisons to bring a motion on the defendant's behalf or the lapse
 13 of 30 days from receipt of such a request by the warden of the defendant's facility." District courts
 14 in this Circuit have reasoned that this language provides two alternative routes on which a
 15 defendant may bring his action to court. *See United States v. Rodriquez-Acedo*, Case No. 19-cr-
 16 03539, 2020 WL 4192289, at *2 (S.D. Cal. July 21, 2020); *United States v. Saenz*, Case No.
 17 97CR2106-JLS, 2020 WL 2767558, at *2 (S.D. Cal. May 28, 2020); *United States v.*
 18 *Weidenhamer*, Case No. CR-16-01072-PHX-ROS, 2019 WL 6050264, at *2-4 (D. Ariz. Nov. 8,
 19 2019). Under the first route of exhaustion, the defendant has petitioned the Warden, the Warden
 20 denies that petition within thirty days, and the defendant must fully exhaust his administrative
 21 remedies by appealing the Warden's denial. Under the second route of exhaustion, the Warden
 22 fails to act on defendant's petition within thirty days and the defendant may proceed directly to the
 23 district court. "The purpose of the 'lapse of 30 days' language is to give a defendant an alternative
 24 if attempts to exhaust administrative remedies appear futile." *Rodriquez-Acedo*, 2020 WL
 25 4192289, at *2. The Court agrees with this reading of the statute.

26 Defendant submitted a request for release to the Warden at USP McCreary on May 7, 2020.
 27 ECF No. 2026-2. The Warden denied this request on May 27, 2020, articulating: "We recognize
 28 that you, like all of us, have legitimate concerns and fears about the spread and effects of the virus.

1 However, your concern about being potentially exposed to, or possibly contracting, COVID-19
 2 does not currently warrant an early release from your sentence.” ECF No. 2026-3. The Warden
 3 then provided that Defendant was to file a BP-9 form within 20 days of receipt should he choose
 4 to appeal this determination. *Id.* The record before the Court does not provide that Defendant
 5 appealed this denial or took any further administrative action. And the Government has not
 6 conceded or waived the exhaustion requirement.² Based on this information, the Court finds that
 7 Defendant has failed to exhaust his administrative remedies. And because this exhaustion
 8 requirement is expressly required by the statute itself, the Court is not free to carve out an exception
 9 to the congressional mandate. *See Ross v. Blake*, 136 S.Ct. 1850, 1857 (2016) (while “judge-made
 10 exhaustion doctrines . . . remain a minimal to judge-made exceptions, . . . a statutory exhaustion
 11 provision stands on different footing. There Congress sets the rules – and courts have a role in
 12 creating exceptions only if Congress wants them to.”). Therefore, the Court must deny defendant’s
 13 motion for failure to exhaust his administrative remedies.

14 **III. CONCLUSION**


15 IT IS THEREFORE ORDERED that defendant’s motion for compassionate release (ECF
 16 Nos. 2007 & 2011) is **DENIED without prejudice** for failure to exhaust his administrative
 17 remedies as required by 18 U.S.C. § 3582(c)(1)(A).

18 IT IS FURTHER ORDERED that the Government’s motion for leave to file sealed exhibits
 19 (ECF No. 2028) is **GRANTED nunc pro tunc** to protect the defendant’s privacy.

20 IT IS FURTHER ORDERED that the defendant is not entitled to be present for a hearing
 21 on a motion for compassionate release. *See* FED. R. CRIM. P. 43(b)(4).

22 IT IS SO ORDERED.

23 DATED this 5th day of November, 2020.

24
 25 
 26 LARRY R. HICKS
 UNITED STATES DISTRICT JUDGE

27
 28 ² At least one court in this Circuit has found that the Government may waive the exhaustion requirement
 by ignoring the procedural requirements and only arguing against a defendant’s motion on the merits. *See*
Rodriguez-Acedo, 2020 WL 4192289, at *2. That was not the case here.